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Error to Circuit Court, Albemarle County.

Action by James B. Baylor, trustee for Maria R. Baylor, against the Chesapeake & Ohio Railway Company. From a judgment for plaintiff, defendant brings error. Affirmed.

D. H. & Walter Leake, of Richmond, for plaintiff in error.

Carter Braxton, of Staunton, for defendant in error.

CHESAPEAKE & O. R. CO. *v.* CARNAHAN.

Nov. 11, 1915.

[86 S. E. 863.]

1. Jury (§ 32*)—Number of Jurors—Federal Employers' Liability Act—Actions Under.—The federal Employers' Liability Act, as amended in 1910 (Act April 22, 1908, c. 149, 35 Stat. 65, as amended by Act April 5, 1910, c. 149, 36 Stat. 291 [U. S. Comp. St. 1913, §§ 8657-8665]), provides in section 6 (section 8662) that federal courts shall have concurrent jurisdiction with state courts of cases arising under the act and that no such case brought in a state court shall be removed to the federal court. Const. U. S. Amend. 7, declares that in suits at common law, where the value in controversy shall exceed \$20, the right to trial by jury shall be preserved. Code 1904, § 3106, provides for a civil jury of 7. Held, that an action under the federal Employers' Liability Act might be tried by the civil jury of 7 for the enforcement of such federal rights was given to the state court, whose law governs, and the amendment applies only to federal courts.

[Ed. Note.—For other cases, see Jury. Cent. Dig. §§ 221-225; Dec. Dig. § 32.* 9 Va.-W. Va. Enc. Dig. 6.]

2. Jury (§ 11*)—Jury Trial—Amendments.—Const. U. S. Amend. 7, preserving inviolate the right to trial by jury as at common law, is a limitation only on the administration of law in the federal courts, and not of the state courts, and the fourteenth amendment does not apply it to the state courts.

[Ed. Note.—For other cases, see Jury. Cent. Dig. §§ 19-24; Dec. Dig. § 11.* 9 Va.-W. Va. Enc. Dig. 6.]

3. Damages (§ 216*)—Instructions—Misleading Instructions.—In a personal injury action, where the court orally charged the jury that they could not consider the possibility of plaintiff's promotion or profits from collateral undertakings, a charge that in assessing the damages the jury might consider plaintiff's mental anguish, bodily injury, pecuniary loss, loss of capacity for work, and its effect on his

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

future, is not erroneous, as allowing jurors to take into consideration speculative matters as to future earnings.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 548-555; Dec. Dig. § 216.* 4 Va.-W. Va. Enc. Dig. 222.]

4. Damages (§ 216*)—Instructions—Misleading Instructions.—In a personal injury action, an instruction that the jury should assess such damages as might seem to them just and fair is not erroneous, because mentioning the amount of damages claimed in the declaration as the maximum.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 548-555; Dec. Dig. § 216.* 4 Va.-W. Va. Enc. Dig. 222.]

5. Trial (§ 252*)—Instructions—Applicability to Issues.—In a personal injury action, where there was no evidence as to plaintiff's possibility of promotion in the future or other profits, an instruction that the jury could not take into consideration such matters was properly overruled; this being properly so where the court orally warned the jury against considering them.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 505, 596-612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 718.]

6. Master and Servant (§ 278*)—Injuries to Servant—Actions—Evidence.—In an action for injuries received by a railroad fireman in a collision, evidence held to warrant a verdict against the master.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 725.]

7. Damages (§ 132*)—Personal Injuries—Measure of Damages.—Where a railroad fireman 32 years of age, who earned \$100 a month and was in the best of health, capable of undergoing the most strenuous exertion, was injured in a collision in such a manner that one leg was so roasted by the boiler that it had to be amputated, and the wound was not healed over a year after the accident, and he was unable to perform any labor, an award of \$25,000 cannot be held excessive.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 372-385, 296; Dec. Dig. § 132.* 4 Va.-W. Va. Enc. Dig. 204.]

Error to Circuit Court, Hanover County.

Action by Asa P. Carnahan against the Chesapeake & Ohio Railway Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

D. H. & Walter Leake and *Henry Taylor, Jr.*, all of Richmond, for plaintiff in error.

Allen & Walsh, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.